HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 254 (M/B)/2004

Zunaid Khan

VS

Municipal Board Principal Rudrapur others.

Approved for reporting.

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~~Not approved~~ for reporting

Date of decision 15.10.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.254 (M/B) 2004

Zunaid Khan, ...Petitioner

Versus

Municipal Board, Parishad,
Rudrapur, and others .....Respondents

Sri M.C. Pandey learned counsel for the petitioner
Sh. Sandeep Tandon, learned counsel for the respondents

Dated: 15-10-2004

Hon'ble M. M. Ghildiyal, J.
Hon'ble Rajesh Tandon, J.

Delivered by Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for quashing of the order dated 2.4.2004. Further the petitioner has prayed for a writ of mandamus directing the respondents to allow the petitioner to collect the TahBazari on the terms and condition of the contract.

TahBazari was in respect of the period from 1-4-2003 to 31-3-2004, the period had already expired during the pendency of the writ petition. Further, the impugned order having been passed without assigning any reasons therefore, liberty is given to the respondents to pass fresh order in accordance with law. At the time of admission of the writ petition following order was passed on 7-4-2003:-

" Heard Sh. M.C. Pande learned counsel for the petitioner, learned standing counsel and Mr. Sandeep Tandon, learned counsel for the respondent nos. 1,3,and 4.

Learned counsel for the respondents prays for and are granted three weeks time to file counter affidavit. List thereafter.

Learned counsel for the petitioner submitted that the auction was finalized in favour of the petitioner for collection of Tehbazari and Municipal Board vide its resolution dt. 24-3-2003 has confirmed the auction favour of the petitioner. Therefore, the contract is concluded in view of section 96 of the U.P. Municipalities Act and there is no power with the Collector to cancel such contract under the Municipalities Act. Therefore, the order passed by the Collector to cancel the contract in favour of the petitioner and passing an order for holding a fresh auction is contrary to the provisions of law. Learned counsel for the respondent could not point out any provisions under the Municipalities Act empowering the Collector to exercise such powers.

Having regards to the facts and circumstances of the case and having considered the arguments of the learned counsel for the parties, we direct that the auction scheduled to be held today shall not be held, if it has not been held by now i.e 11-30 a.m . But, it it has been held by now, further proceedings shall not be undertaken.

It is further provided that in the meantime, Nagar Palika shall collect the Tehbazari through its own officers."

Briefly stated an invitation for making offers from general public within the Municipal limit of Rudrapur, District Udham Singh Nagar for collection of TahBazari in respect of disposal of dead animals, the issue of a license for Riksha etc. collection of parking fees and fixing of hordings. The auction was fixed for 27-2-2003 . However, the said date was postponed to 2.3.2003.

Petitioner has submitted that he was highest bidder on the said auction for a sum of Rs. 11,13,000/- which was accepted by the respondent no.1 and on the spot it was signed by the tax Inspector, Executive officer, and president of respondent no.1. The bid chart was prepared on the spot.

The counsel for the petitioner has submitted that in accordance with the condition no.4 he has deposited ¼ th amount to the extent of Rs. 278,250/- on 4.3.2003. The contract was sanctioned by the Board by a resolution dated 24.3.2004. The bid was also afforded.

Petitioner has submitted that on 1.4.2003 he made a request for execution of the formal contract. He was informed on 2.4.2003 that the District Magistrate has cancelled the contract and it shall be auctioned again.

Counsel for the petitioner has submitted that the order-dated 2.4.2003 is cryptic and does not assign any reasons.

We have perused the order-dated 2.4.200. From the order dt. 2-4-2003 it will appear that inspite of the fact that bid was approved and ¼ th amount has been deposited by the petitioner it became a concluded contract, the same could not have been revoked without giving the opportunity to the petitioner.

It is settled law that reasons are link between the application of mind and the order passed on the basis of the same. It has been held in 2004 (5) SCC page 568-a that right to reason is a indispensable part of sound judicial system. The observations are quoted below:-

> *"Even in respect of administrative orders Lord Denning, M.R. in Breen V. Amalgamated Engg. Union observed; "The giving of reasons is one of the fundamentals of good administration." In alexander machinery (Duldey) ltd. V. Crabtee it was observed; "failure to give reasons amounts to denial of justice" "Reasons are live links between the mind of the decision-take to the controversy in question and the decision or conclusion arrived at" Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx" in can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reason at least sufficient to indicate an application*

of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

For the reasons stated above, the order dated 2-4-2004 is quashed.

Since, we have already quashed the order, liberty is given to the petitioner to apply for refund of the amount deposited by him, the same shall be refunded to the petitioner along with the prevailing rate of interest.

The writ petition is disposed of. No order as to costs.

(RAJESH TANDON J.) **(M.M. GHILDIYAL J.)**

Dated 15-10-2004
M.K